

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1005 of 2015

Best Security Services, Proprietor Kuldeep Chaturvedi, Son Of Shri Raj Kishore Chaturvedi, Aged About 32 Years, House No. 9 (Jai Govinda) R.D.A. Colony, Tikarapara, Raipur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : The Additional Chief Secretary, Home Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, Post And P.S. Naya Raipur, District Raipur (Chhattisgarh)
2. Controlling Authority, Additional Director General (Guptvarta), Police Head Quarter, Raipur (Chhattisgarh)

---- Respondent

For Petitioner	:	Shri Raghavendra Pradhan, Advocate
For Respondent/State	:	Shri Satish Gupta, Govt. Advocate

Order On Board

30/09/2015

Heard.

1. This petition is directed against order dated 13.4.2015 dismissing petitioner's appeal against an order dated 17.10.2014 by which his licence has been cancelled.
2. Quintessential facts necessary for decision of the petition are that the petitioner was granted licence of a Security Agency under the provisions of the Private Security Agencies (Regulation) Act, 2005 (for short "the Act of 2005") on 9.12.2013. While, the petitioner was running Security Agency, a criminal case came to be registered against him on 9.2.2014 upon lodging of FIR which led to registration of offence under Sections 420, 467, 468, 471, 406 read with Section 120-B IPC.
3. The petition was arrested on 12.2.2014 and released on bail on 14.8.2014.
4. In the meantime, when the respondents came to know about registration of criminal case and arrest, a show cause notice was issued on 6.3.2014 which eventually resulted in cancellation of licence vide order dated 17.10.2014. The order was unsuccessfully challenged in appeal. This is how the petitioner is now before this Court.

5. Assailing correctness and validity of order of cancellation of licence and dismissal of appeal, learned counsel for the petitioner contends that firstly show cause notice was not served upon him. He was in jail. In his rejoinder to the return of the respondents, the petitioner has categorically asserted that show cause notice was not served. Thus, the impugned order is liable to be set aside only on the ground of violation of provision in Section 13 (4) of the Act of 2005. The next submission is that mere registration of a criminal case, does not by itself, results in cancellation and suspension of licence as provided under Section 13 of the Act of 2005. The statutory condition of licence engrafted in Rule 10 (4) of the Chhattisgarh State Private Security Agencies (Regulations) Rules, 2008 (for short "Rules of 2008") obliges communication only in the event of framing of charge and not mere registration of crime. It is next contended that the proceedings for cancellation were initiated even before the petitioner was granted bail. He remained in jail from 12.2.2014 to 18.8.2014. So he had not occasion to communicate. Before he could exercise such option, the proceedings for cancellation had already been initiated vide show cause notice dated 6.3.2014, which too was never served upon the petitioner. Therefore, it is contended, the impugned action and order are liable to be set aside.
6. Per contra, learned counsel for the State submits that once a criminal case is registered, Rule 10 (4) of the Act of 2008 is attracted. He submits that the words "criminal charge framed" as appearing therein have to be rationally considered to mean registration of a criminal case. He next submits that apparently, the petitioner was arrested and a criminal case having been registered against him, it becomes a person of criminal antecedents. Therefore, in view of provision contained in Section 13 of the Act of 2005, the licence is liable to be cancelled. Learned State counsel submits that notice was duly issued to the petitioner and he having preferred an appeal, now he cannot ventilate such a grievance that he was not heard.
7. After hearing learned counsel for the parties, in the considered opinion of this Court this petition deserves to be allowed for reasons which are as follows:

Firstly, there has been procedural impropriety leading to issuance of order of cancellation of licence. Section 13 (4) of the Act of 2005 obligates affording of opportunity of hearing. Such opportunity cannot be watered down to an empty formality. The facts which are apparent and not in dispute are that the petitioner was arrested on 12.2.2014. The show cause notice itself shows that the authority had full notice and knowledge that the petitioner was under arrest. The petitioner is said to have been bailed out on 14.8.2014. This show cause notice was issued on 6.3.2014. In the petition, specific ground has been taken that the petitioner was not afforded opportunity of hearing. To this, respondent- State has filed its return stating that show

cause notice was issued to the petitioner. By rejoinder, the petitioner has traversed this assertion by stating that show cause notice was never served on him. There is no material on record to show that show cause notice was served upon him. Therefore, the impugned order is bad on this count.

8. On merits also, examination of statutory scheme of the Act of 2005 shows that cancellation of suspension of licence can take place only on the ground which have been exhaustively enumerated. The grounds on which the licence may be cancelled are contained in clause- (c) of sub-section (1) of Section 13 of the Act of 2005.

Clause (c) provides that the licence may be cancelled on the ground that the licence holder has violated provisions of the Act or the Rules made thereunder or any of the conditions of the licence.

As far as provision of the Act of 2005 are concerned, there is no specific provision in the act which shows that only on the ground of registration of a criminal case, disqualification will follow warranting cancellation of licence.

9. The requirement of Rule 10 (4) of the Rules of 2008 is that the licence holder is obliged to communicate to the controlling authority about any criminal charge framed. Conscious use of words “charged framed” are clearly indicative of the intention of the Rule Making Authority that the requirement of communication would be an obligation only when criminal charges are framed. It cannot be read to mean “registration of criminal case in the police station”. Though learned counsel for the State strenuously urged to convince this Court that the other contextual interpretation should be preferred, I am not inclined to accept this submission as against a clear and unambiguous words used by the Rule Making Authority in the Rules. The Rule Making Authority is presumed to have full understanding and knowledge of difference in “framing of charge” and “registration of criminal case”. Therefore, if the words “criminal charges framed” has been used, it has to be understood in that sense only and no other sense. There is no other reason for this Court to import any other meaning departing from the normal rules of literal construction.
10. Present is also not a case where more than one criminal cases have been registered against the petitioner so as to say that in such a case, the licence was liable to be cancelled by taking recourse to provisions contained in clause (k) of sub-section (1) of Section 13 of the Act of 2005.
11. In the result, the petition succeeds and allowed. Impugned orders dated 17.10.2014 and 13.4.2015 are set aside.

12. It is stated that during pendency of the petition, the period of licence came to an end.
13. In that view of the matter, as a consequence flowing from order passed by this Court, the licence granted in favour of the petitioner shall be treated as having continued till its expiry, with the result that the petitioner would be entitled to apply for renewal of licence in accordance with the provisions of the Act of 2005 and Rules made thereunder.

Sd/-

(Manindra Mohan Shrivastava)

Judge